

State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095

(603) 271-2147 FAX (603) 271-6588



Lori Champagne
P.O. Box 3721
Nashua, NH 03061-3721

Re: Wetland Bureau File #2004-1387
Property at 328 Cram Road
Lyndeborough, NH 03082

ADMINISTRATIVE ORDER

No. WD 04-23

November 17, 2004

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Water Division to Lori L. Champagne pursuant to RSA 482-A:6. This Administrative Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Water Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, NH 03301.
2. Lori Champagne is an individual having a mailing address of P.O. Box 3721, Nashua, NH 03061-3721.

C. STATEMENTS OF FACTS AND LAW

1. RSA 482-A authorizes DES to regulate dredging, filling, and construction in or on any bank, flat, marsh, wetland, or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, the Commissioner of DES has adopted NH Code of Admin. Rules Wt *et seq.* to implement this program.
2. RSA 482-A:3, I states that "no person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without permit from [DES]."
3. RSA 482-A:14, III provides that "(f)ailure, neglect or refusal to comply with [RSA 482-A] or rules adopted under [that] chapter, or an order or condition of a permit issued under [RSA 482-A], and the misrepresentation by any person of a material fact made in connection with any activities regulated or prohibited by [RSA 482-A] shall be deemed violations of RSA 482-A".
4. Lori Champagne is the owner of land located at 328 Cram Road in Lyndeborough, more particularly described on the Lyndeborough Tax Map 5 as Lot 37 ("the Property").

5. On April 22, 2004, DES Wetland Bureau received a copy of a letter sent by the DES Dam Bureau to Ms. Champagne, which included the following information:

- a. DES Dam Bureau personnel had conducted an inspection of the Property on April 9, 2004 following a report of an illegally constructed dam;
- b. During the April 9, 2004 inspection, DES Dam Bureau personnel observed that a dam had been constructed on the Property without a dam permit from the DES Dam Bureau;
- c. The existing dam does not meet current state standards for dam construction; and
- d. If Ms. Champagne decides to retain the dam, a standard dredge and fill permit will be required by the DES Wetlands Bureau for impacts to the wetlands on the Property.

6. The April 22, 2004 letter also requested that Ms. Champagne reply to DES in writing within 30 days of receipt of the letter.

7. On May 4, 2004, DES personnel received a telephone call from Ms. Champagne during which she stated that she would like to remove the dam. DES personnel informed her that she would need to coordinate the dam removal with the DES Wetland Bureau and the DES Dam Bureau as stated in the April 22, 2004 letter.

8. On June 21, 2004, DES personnel conducted another inspection of the Property and observed the following:

- a. A dam, measuring approximately 131 feet long x 7 feet high, with a 20 foot long culvert bypass pipe, filling approximately 2,620 square feet of jurisdictional wetlands;
- b. The impoundment created by the dam covers approximately 50,000 square feet, intercepting a perennial stream, altering a forested wetland and potentially impacting seasonal drainage;
- c. A defined drainage existed prior to the construction of the impoundment, as evidenced by the existing vegetation above and below the impoundment;
- d. An access road had been constructed on the back of the impoundment, measuring approximately 150 feet long by 50 feet wide, filling approximately 7,500 square feet of jurisdictional wetlands;
- e. Approximately 265 linear feet of a perennial stream had been altered by construction of an impoundment;
- f. Stumps, logging debris and boulders were placed in jurisdictional wetland along the back of the access road, creating a fill area of approximately 2,500 square feet;

g. No erosion controls were in place to stabilize the exposed soils adjacent to the impoundment.

9. To date, DES Wetlands Bureau has not received a standard dredge and fill application from Ms. Champagne for impacts to wetlands on the Property.

D. DETERMINATION OF VIOLATIONS

1. Lori Champagne has violated RSA 482-A:3, I by constructing a dam within a perennial stream impacting approximately 265 linear feet of a perennial stream without a permit from DES.

2. Lori Champagne has violated RSA 482-A:3, I by filling approximately 2,620 square feet of wetland to construct a dam without a permit from DES.

3. Lori Champagne has violated RSA 482-A:3, I by filling approximately 7,500 square feet of wetland to construct an access road without a permit from DES.

4. Lori Champagne has violated RSA 482-A:3, I by filling approximately 2,500 square feet of wetland with logging debris without a permit from DES.

E. ORDER

Based on the above findings, DES hereby orders Lori Champagne as follows:

1. **Immediately** retain a certified wetland scientist to supervise the implementation of the restoration plans prepared in accordance with Items 2 and 3 below and to submit the restoration progress reports.

2. **Within 90 days of the date of this Order**, submit a dam removal plan to the DES Dam Bureau for review and approval. The dam removal plan shall include, at a minimum, a detailed description of the methods to be used to drain the pond and remove the dam from the wetland, along with a schedule for implementing the measures described. The dam removal plan shall also include a description of the erosion control measures necessary to stabilize the Property, protect surface water quality, and prevent further impacts to surface waters during the dam removal.

3. **Within 90 days of the date of this Order**, submit a wetlands restoration plan to the DES Wetland Bureau for review and approval. The restoration plan shall be prepared by a certified wetland scientist, and include provisions for restoration of the wetland and surface waters impacted by activities at the Property. The following shall be submitted with the restoration plan:

- a. A plan with dimensions, drawn to scale, showing:
 - i. existing conditions and jurisdictional impacts on the sites, with delineated jurisdictional wetland boundaries, and land topography; and
 - ii. proposed conditions after reestablishing the jurisdictional areas;

- b. A detailed description of the proposed means of erosion control (silt fence, hay bales, etc.) and stabilization of the restoration area;
 - c. A detailed description of the proposed planting plan for the stabilization and revegetation of the restoration areas;
 - d. A description of the proposed construction sequence, equipment, methods for accomplishing restoration and anticipated restoration compliance date, including the details of the dam removal.
 - e. A description of the method of documenting at least 75% survival of all vegetation planted during the restoration project. This should include at a minimum, monitoring progress reports for two successive growing seasons following completion of the restoration project. These reports should be submitted to DES on November 1, 2005 and November 1, 2006, respectively.
4. **Implement** the restoration plans proposed in accordance with Items 2 and 3 above only after receiving written approval, and as conditioned, by DES.
5. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

William A. Thomas, Compliance Specialist
DES Water Division
P.O. Box 95
Concord, NH 03302-0095
Fax: (603) 271-6588
e-mail: wthomas@des.state.nh.us

F. APPEAL


Any person aggrieved by this Order may request DES to reconsider the Order within 20 days of the date of the Order. The request for reconsideration must describe in detail each ground for the request. DES may grant a rehearing, if in its opinion, good cause is provided in the motion.


Filing an appeal or motion for reconsideration does not relieve Lori Champagne of the obligation to comply with the Order.

G. OTHER PROVISIONS

Please note that RSA 482-A:13 and RSA 482-A:14 provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. DES will continue to monitor Lori Champagne's compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Hillsborough County Registry of Deeds so as to run with the land.


Harry T. Stewart, Director
Water Division


Michael P. Nolin, Commissioner
Department of Environmental Services

Certified Mail/RRR: 7003 2260 0005 9209 9451

cc: Gretchen R. Hamel, Legal Unit Administrator ✓
Public Information Officer, DES PIP Office
Jennifer J. Patterson, Sr. Asst. Attorney General, NHDOJ/EPB
Jeffrey D. Blecharczyk, DES Wetlands Bureau
Dale Guinn, DES Dam Bureau
United States Army Corps of Engineers, Regulatory Office New England District
Lyndeborough Board of Selectmen
Lyndeborough Conservation Commission

